

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201018001**

Release Date: 5/7/2010

Index Number: 59.00-00

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B6

PLR-121416-09

Date:

October 20, 2009

LEGEND:

Taxpayer =

Year =

X =

Dear :

This letter responds to your letters, dated , and
, requesting consent to revoke Taxpayer's election under § 59(e) of
the Internal Revenue Code for Year.

The facts are represented by Taxpayer to be as follows:

Taxpayer develops and manufactures technologies primarily for X. As a result
of environment damage resulting from the manufacture of these products, Taxpayer has
incurred and continues to incur environmental remediation expenditures.

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Under Rev. Rul. 94-38, 1994-1 C.B. 35, expenses incurred to remediate contamination caused by manufacturing activities represent ordinary and necessary business expenses deductible under § 162.

Section 172 allows the portion of a net operating loss (NOL) that is a specified liability loss to be carried back to each of the ten preceding years. A specified liability loss is the portion of the NOL that is comprised of certain deductions, including any amount allowable as a deduction that is in satisfaction of a liability under a federal or state law requiring the remediation of environmental contamination if the act (or failure to act) giving rise to the liability occurs at least 3 years before the beginning of the taxable year and the taxpayer used an accrual method of accounting during the period the act (or failure to act) occurred.

Rev. Rul. 2004-18, 2004-1 C.B. 509, concludes that under § 1.263A-1(c)(3) of the Income Tax Regulations, environmental remediation costs incurred to clean up land contaminated during the ordinary business operations of manufacturing inventory are properly allocable to the inventory that the taxpayer produces, and therefore, are recovered through “cost of goods sold.” Following the issuance of Rev. Rul. 2004-18, Taxpayer concluded that because its environmental remediation costs had to be included as part of cost of goods sold, such costs were not allowable as a deduction and, therefore, could not qualify for the 10-year carryback as part of a specified liability loss under § 172(f). Consequently, Taxpayer made a § 59(e) election on its Year return to limit its NOL for Year to an amount equal to its specified liability loss not required to be included as part of cost of goods sold.

Subsequently, the Internal Revenue Service (the Service) modified its view and concluded that environmental remediation costs that are allocated to production activities under § 263A and recovered through cost of goods sold constitute specified liability losses to the extent that they are taken into account in computing an NOL for the taxable year. Taxpayer now requests consent to revoke its § 59(e) election for Year.

Law and Analysis:

Section 59(e) provides an optional write-off of certain tax preferences over an applicable period.

Section 59(e)(2) defines the term “qualified expenditure” to include any amount that, but for an election under § 59(e), would have been allowable as a deduction in the year paid or incurred under § 174(a) (relating to research and experimental expenditures).

Section 59(e)(4)(A) provides that an election under § 59(e)(1) may be made with respect to any portion of any qualified expenditure. Section 59(e)(4)(B) provides that an election under § 59(e) may be revoked only with the consent of the Secretary.

Section 1.59-1(c)(1) provides that an election under § 59(e) may be revoked only with the consent of the Commissioner. Such consent will be granted only in rare and unusual circumstances. The revocation, if granted, will be effective in the first taxable year in which the § 59(e) election was applicable. However, if the period of limitations for the taxable year the § 59(e) election was applicable has expired, the revocation, if granted, will be effective in the earliest taxable year for which the period of limitations has not expired.

Section 1.59-1(c)(2) provides that a taxpayer requesting the Commissioner's consent to revoke a § 59(e) election must submit the request prior to the end of the taxable year the applicable amortization period described in § 59(e)(1) ends. The application for consent to revoke the election must be submitted to the Service in the form of a letter ruling request.

Section 1.59-1(c)(3) provides that a request to revoke a § 59(e) election must contain all of the information necessary to demonstrate the rare and unusual circumstances that would justify granting revocation.

Section 1.59-1(c)(4) provides that the unamortized balance of the qualified expenditures subject to the revoked § 59(e) election as of the first day of the taxable year the revocation is effective is deductible in the year the revocation is effective (subject to the requirements of any other provision under the Code, regulations, or any other published guidance) and the taxpayer will be required to amend any federal income returns affected by the revocation.

In the instant case, Taxpayer made a § 59(e) election on its Year tax return based on its interpretation of Rev. Rul. 2004-18. It was reasonable for Taxpayer to conclude that because under Rev. Rul. 2004-18 environmental remediation costs are recovered through cost of goods sold, they do not qualify for the 10-year carryback as part of deductions included in specified liability losses under § 172(f). When Taxpayer made the § 59(e) election, Taxpayer could not reasonably have anticipated that the Service would modify its view and conclude that environmental remediation costs that are recovered through cost of goods sold may constitute a specified liability loss. Therefore, the facts of this case constitute rare and unusual circumstances for purposes of § 1.59-1(c)(1).

Based solely on the information submitted and the representations made, we conclude that the requirements of § 1.59-1(c)(1) have been satisfied. Therefore, Taxpayer may revoke its § 59(e) election for Year. The revocation is effective in the earliest year for which the period of limitations has not expired.

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced

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in this letter. In particular, we express no opinion regarding whether the revocation of Taxpayer's Year § 59(e) election, effective in the earliest year for which the period of limitations has not expired, will result in Taxpayer having an NOL or a specified liability loss in such year.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file in this office, a copy of this letter will be sent to your authorized representatives.

Sincerely yours,

Brenda M. Stewart

Brenda M. Stewart
Senior Counsel, Branch 6
Office of Associate Chief Counsel (Passthroughs
& Special Industries)

cc: